

AMENDED IN SENATE AUGUST 22, 2002

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN SENATE MAY 23, 2002

AMENDED IN SENATE MAY 14, 2002

AMENDED IN SENATE APRIL 30, 2002

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**SENATE BILL****No. 2000**

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**Introduced by Senator Dunn**

*(Coauthors: Assembly Members Cardoza and Matthews)*

February 22, 2002

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An act to add Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 2000, as amended, Dunn. Electric power and natural gas: unlawful practices.

Existing law sets forth the obligations that arise from particular transactions.

This bill would prohibit any person engaged in the business of generating, selling, distributing, transferring, marketing, or trading electricity or natural gas from engaging in or knowingly facilitating specified conduct, except as specified. This bill would provide that a person found in violation of these provisions would be required to disgorge the profits from the unlawful conduct, and would be liable for, among other things, 3 times the amount of the disgorgement and attorney fees. The bill would require that actions for relief under these

provisions be brought in a court of competent jurisdiction by the Attorney General or by another person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Title 3.6 (commencing with Section 1883) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 3.6. UNLAWFUL ELECTRIC POWER AND  
NATURAL GAS PRACTICES

1883. (a) For purposes of this title, “person” means and includes a natural person, corporation, firm, partnership, joint stock company, association, or any other organization or entity of persons. “Person” does not include a nonmanagement employee working under the supervision or direction of another.

(b) A person engaged in the business of generating, selling, distributing, transferring, marketing, or trading electricity or natural gas may not engage in any conduct that results, or is intended to result, in a significant or sustained increase in the price of electricity or natural gas, or a significant or sustained decrease in electric or natural gas system reliability, unless the conduct is covered by rules, tariffs, or an agreement of an electrical corporation or gas corporation that is authorized under the Public Utilities Code and has been approved by the Public Utilities Commission. Conduct to which this section applies, includes, but is not limited to:

(1) The physical withholding of electricity from any electricity market.

(2) The economic withholding of electricity by submitting bids above the reasonable price for that electricity in a fair and competitive market.

(3) The acquiring, using, or disseminating of electric system reliability information.

(4) The using or providing of false or misleading information.

(5) The creating, prolonging, or using of shortages or outages.

(6) The refusing of any lawful dispatch order of any transmission system operator to generate electricity.

(7) The scheduling of electricity into the electricity transmission system with the intent or knowledge that the schedule will create congestion or the false impression of congestion in that system, or result in congestion counterflow payment, or compensation to reduce congestion.

(8) The selling, distributing, transferring, marketing, or trading of electricity to any person in any other control area with the intent or knowledge that a similar amount of electricity will be repurchased in the original control area for the purpose of avoiding applicable market rules.

(9) The intentional or knowing withholding of electricity from any market subject to a price cap with the intent to sell, distribute, transfer, market, or trade the electricity to a market not subject to a price cap.

(10) The misrepresentation of the availability or supply of electricity or natural gas.

(11) The misrepresentation of the reason or reasons for electricity generating facility closures, outages, or maintenance.

(12) The selling, distributing, transferring, marketing, or trading of electricity or natural gas between subsidiaries of the same company.

(13) The creation of an artificial increase in demand for natural gas, or refusal to sell natural gas, in order to raise the market price or cause any of the prohibited conduct set forth in this subdivision.

(c) A person shall not knowingly facilitate conduct prohibited by subdivision (b).

(d) This section does not apply to ~~any company located in California that is engaged exclusively in activities directly related to the exploration and production of petroleum and natural gas in California, as defined in Section 211111 of the North American Industry Classification System.~~ of any person, firm, or corporation, including exploration and production on the Outer Continental Shelf offshore California.

(e) This section shall not apply to activities of a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, paragraph (17) of Section 796 of, paragraph (18) of Section 796 of, and Section 824a-3 of, Title 16 of the United States Code, nor shall this section apply to other generation units installed, operated, and

1 *maintained at a customer site to serve that facility's load*  
2 *exclusively.*

3 1883.1. A person who violates Section 1883 shall, in addition  
4 to other damages, be required to disgorge the profits of that  
5 unlawful conduct. As used in this section, "disgorgement" shall  
6 be measured by the difference in the actual price charged for the  
7 electricity or natural gas in the course of the unlawful conduct and  
8 the reasonable price for that electricity or natural gas in a fair and  
9 competitive market. In addition, a person found to be in violation  
10 of Section 1883 shall be liable for three times the amount of  
11 damages sustained, as measured by the amount of disgorgement,  
12 because of the act or acts of that person. A person found to be in  
13 violation of Section 1883 shall also be liable for the costs of a civil  
14 action brought to recover those damages and attorney fees.

15 1883.2. (a) Specific or preventive relief may be granted to  
16 enforce a penalty, forfeiture, or penal law in any case of a violation  
17 of Section 1883.

18 (b) A person who engages, has engaged, or proposes to engage  
19 in any of the conduct set forth in Section 1883, may be enjoined  
20 in any court of competent jurisdiction. The court may make these  
21 orders or judgments, including the appointment of a receiver, as  
22 may be necessary to prevent the use or employment by a person of  
23 a practice or conduct set forth in Section 1883, or as may be  
24 necessary to restore to a person in interest money or property. The  
25 court shall order the disgorgement of the revenue from the use or  
26 employment of any act or practice prohibited by Section 1883, and  
27 shall establish a fluid recovery fund for the return of the funds.

28 1883.3. Actions for relief pursuant to this chapter shall be  
29 prosecuted exclusively in a court of competent jurisdiction by the  
30 Attorney General, or by a person acting for the interests of itself,  
31 its members, or the general public.

32 1883.4. Unless otherwise expressly provided, the remedies or  
33 penalties provided by this section are cumulative to each other and  
34 to the remedies or penalties available under all other laws of this  
35 state.

